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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Implementation of Sections of)	
the Cable Television Consumer)	
Protection and Competition Act)	CS Docket No. 95-174
of 1992 -- Rate Regulation)	
)	
Uniform Rate-Setting Methodology)	DOCKET FILE

REPLY COMMENTS OF COLE, RAYWID & BRAVERMAN

The law firm of Cole, Raywid & Braverman ("CR&B") hereby submits these Reply Comments in the above-referenced proceeding. CR&B files these comments on behalf of the cable television operators and state cable television associations identified in Attachment A hereto. CR&B restates here its strong support for the Commission's efforts in this proceeding. It urges the prompt adoption of implementing regulations. The sooner such regulations are adopted, the sooner the promised benefits will accrue.

The cable operators submitting Comments in this proceeding repeatedly applaud the Commission for its proposal to improve the existing rules governing cable rate regulation. They emphasize the obvious benefits that would result from the establishment of uniform regional rates, and they urge the Commission to implement a regulatory scheme that would facilitate use of the regional rate option.

Although different cable operators advance slightly different regulatory schemes for implementing regional rates, the similarities of the proposals far outweigh the differences.

There is, in fact, a remarkable consistency among the cable Commenters. They uniformly advocate a flexible, "user friendly" regulatory framework.¹ And they responsibly volunteer several "safeguards" to assure the Commission that the regional rate process would not adversely affect local subscribers.² In both regards, the Comments submitted by other cable operators are consistent with CR&B's Comments.

The local regulatory authorities are not as united in their reaction to the Commission's *NPRM*. The Massachusetts Cable Television Commission ("MCTC"), for example, is extremely positive about the regional rate proposal and enthusiastically describes the benefits that would result from the adoption of uniform regional rates. The MCTC is so eager for implementation of the proposal that it volunteers to particulate in a pilot program.³ Other regulatory authorities are somewhat more cautious -- acknowledging the benefits of regional rates, but expressing serious concerns as to how regional rates would be established and administered.⁴ Finally, a few regulators voice outright opposition to any change in the existing rules.⁵ Significantly, their opposition is premised more on a visceral distrust of any measure benefitting cable operators than on a reasoned analysis of why the proposed change would be counter to the public interest. In fact, the proposal underlying this rulemaking is inherently sensible,

¹ See, e.g., Comments of Cablevision Systems Corp.; Comments of Adelphia Communications Corp.; Comments of NCTA.

² See, e.g., Comments of Tele-Communications, Inc. and Continental Cablevision, Inc.

³ MCTC Comments at 14.

⁴ See, e.g., Comments of New Jersey State Board of Public Utilities; Comments of New Jersey Division of Ratepayer Advocate Comments; Comments of Metropolitan Dade County.

⁵ See, e.g., Comments of Cape Coral, Green Acres, Lantana, Miami, North Palm Beach, and Pensacola (the "Florida Cities"); Comments of Rock Hill, South Carolina.

particularly in an era of increasing consolidation and competition. Its opponents have failed to articulate credible reasons why the Commission should not move forward and adopt appropriate implementing regulations with all deliberate speed.

**I. CABLE OPERATORS SHOULD HAVE BROAD DISCRETION TO
DETERMINE THE SCOPE OF UNIFORM REGIONAL RATES**

The Comments submitted in this proceeding confirm that the scope of uniform regional rates should be left largely to the discretion of individual cable operators. As CR&B emphasized in its Comments, rigid eligibility restrictions are unnecessary and probably counterproductive.⁶ The point is well-illustrated by reviewing the Commission proposal to limit regional rate zones to a single ADI (or DMA). Several cable operators and regulators express dissatisfaction with this arbitrary limit, and they point out numerous practical problems.⁷ Others (including CR&B) would accept an initial geographic limit, provided that it is easily waived to accommodate special circumstances.⁸ But not one Commenter articulates a compelling reason to impose an artificial geographic limit. The process of establishing uniform regional rates inevitably means that some local rates would go up and some local rates would go down, but there is nothing inherent to this "revenue neutral" process that favors use of either a very small or a very large geographic region. The Commission should resist the temptation to complicate

⁶ CR&B Comments at 2-3.

⁷ See, e.g., Cablevision Systems Comments at 9.

⁸ See, e.g., CR&B Comments at 4-5.

this rulemaking with a cadre of special restrictions, including unnecessary geographic limitations.⁹ Excessive eligibility and operational restrictions will accomplish little but discourage cable operators from pursuing the regional rate option.

Much the same reasoning applies to the Commission's proposal to prescribe the method through which cable operators would blend together different tier rates to establish a uniform regional rate. Some Commenters prefer "option 1" (which calls for the lowest possible BST rates, with a shift in lost revenue to CPST rates) and others prefer "option 2." While certain Commenters explain their own preference, they do not advance compelling reasons why that particular preference is the only acceptable one. That failure effectively supports the proposal made by some cable Commenters that the cable operator should be allowed to choose between the two designated options.¹⁰ In fact, the failure to convincingly advance one option over the other supports the even more flexible proposal advanced by CR&B. CR&B would allow the operator to choose one of the two designated options or any revenue-neutral "mix" between them.¹¹

Perhaps the most controversial aspect of the Commission's *NPRM* concerns the treatment of systems with different channel carriage. Some Commenters argue that only communities with identical services should be combined into a regional rate zone.¹² Other

⁹ CR&B's preference for minimal restrictions applies to a host of potential regulatory areas raised in the *NPRM*. The proposed "phase-in" of regional rates is a case in point. A mandatory "phase-in" would be a needless complication. Rate changes resulting from regionalization are likely to be relatively modest. Where this is not the case, cable operators are likely to curb rate changes voluntarily to avoid "sticker shock."

¹⁰ See, e.g., NCTA Comments at 10; Cablevision Systems Comments at 10-11.

¹¹ CR&B Comments at 10-11.

¹² See, e.g., New Jersey State Board of Public Utilities Comments at 11.

Commenters argue that a limited exception is necessary for local variations in PEG channels.¹³

Still other Commenters (like CR&B) contend that modest variations in local service should **not** preclude a cable operator from combining different communities into a single region.

TCI and Continental suggest a relatively conservative cut-off for regional rate eligibility. They would allow different franchises to be combined only where the number of regulated channels varies by less than 10% and the total regulated rate in a particular franchise is no more than 5% higher than the weighted regional average.¹⁴ MediaOne, on the other hand, would allow up to a 25% variation in the number of regulated channels.¹⁵ CR&B submits that the 15% channel variation proposed in its Comments is an appropriate threshold. But CR&B is more concerned that a reasonable accommodation of slightly different channel line-ups be adopted than it is wedded to a particular cut-off. The key point is that an insistence on precise service uniformity to qualify for regional rate treatment would severely restrict its use. There is absolutely nothing in the record suggesting such a restriction is necessary. Common sense suggests that operators would not market widely divergent service offerings for a single regional rate.¹⁶

¹³ See, e.g., Cablevision Systems Comments at 10.

¹⁴ TCI and Continental Comments at 10.

¹⁵ MediaOne Comments at 5.

¹⁶ Although CR&B originally discussed variations in "program offerings," CR&B Comments at 8-9, it agrees with TCI and Continental that the variation cut-off should be measured in terms of channel count, rather than channel content.

II. THE ESTABLISHMENT OF UNIFORM REGIONAL RATES WOULD NOT UNDERMINE LOCAL REGULATORY CONTROL.

The Comments submitted by regulators express special concern about the effect rate regionalization would have on local regulation. The Florida Cities claim that regionalization "will have the practical effect of emasculating local franchising authorities' power to regulate rates."¹⁷ Several state authorities avoid such hyperbole, but are also troubled by the jurisdictional and procedural implications of rate regionalization.¹⁸ The Commission should not be dissuaded by these concerns. They are neither as widely shared nor as difficult to resolve as a few Commenters in this proceeding suggest.

First, the vast majority of franchising authorities are, at this point, relatively disinterested in the rate regulation process. More than anything, they would like a simplified process that minimizes their administrative burden. The establishment of regional rates is consistent with this objective. The rate averaging inherent to rate regionalization is mathematically simple. Moreover, the standardization of regional rates would facilitate the formation of cost-effective multi-jurisdiction consortia to review a single set of rates, rather than a panoply of disparate rates.

Second, the coordination of rate regulation across jurisdictional boundaries can be easily accomplished, even if regional consortia do not develop. If a particular jurisdiction does not wish to participate in regulation, it retains that option. In contrast, if it believes the regional rate established by the operator (and approved by other local authorities) is excessive, it is free

¹⁷ Florida Cities Comments at 1.

¹⁸ See, e.g., New Jersey State Board of Public Utilities Comments at 4-5.

to issue an independent order to that effect. The operator could then comply with that franchise-specific order (by reducing its rate either in the particular community at issue or throughout the region) or file an appeal.¹⁹

As Time Warner notes, it is through that appellate process that the Commission can ensure the successful implementation of uniform rates in the face of potentially conflicting local decisions.²⁰ To accomplish that end, the Commission must provide an automatic stay of local orders reducing regional rates until the appellate process is completed. To facilitate efficient resolution of such cases, the Commission should consolidate all related appeals of local rate orders. It should also require franchising authorities to complete their rate review in a fixed period. CR&B supports the idea advanced by the Ohio Cable Telecommunications Association that franchising authorities forfeit their regulatory rights if they do not act within 90 days,²¹ although a slightly more lenient approach also would be acceptable. Fortunately, the true-up mechanism (now formally incorporated into the Form 1240) ensures that cable subscribers ultimately would pay a reasonable rate.

III. THE COMMISSION SHOULD ALLOW THE ITEMIZATION OF ALL FRANCHISE RELATED COSTS AND ADVERTISEMENTS ON A "FEE PLUS COSTS" BASIS.

A few regulators argue against the Commission's proposal to allow the itemization of all franchise related costs and the advertisement of regional rates on a simple "fee plus" basis.

¹⁹ The franchising authority could contest both the initial rates extracted from its specific community for the blended rate calculation and the blending calculation itself, but **not** the operator's right to establish a blended rate.

²⁰ Time Warner Comments at 18-19.

²¹ Ohio Cable Telecommunications Association Comments at 15.

They argue that the proposal is incompatible with the purported objective of uniform rates and will create excessive customer confusion.²² They are wrong on both counts. The benefits of uniform regional rates will result as long as operators can advertise a uniform base rate and explain that additional local fees may apply. This is a very common marketing approach in other industries, and there is no reason to believe that it will confuse cable customers. This itemization approach also advances the interest expressed by the Florida Cities in encouraging open negotiation over local franchise terms without the specter of cross-subsidization.²³ Most importantly, the "fee plus" approach encourages local political accountability.

The cable Commenters invariably support the itemization proposal,²⁴ and MediaOne goes so far as to argue that such itemization should be mandatory.²⁵ CR&B continues to believe that its initial proposal on this issue is appropriate. Operators should have a non-waivable right to itemize such costs. They should have the freedom to itemize all or none of these costs, or perhaps just the additional costs imposed in future franchise renewals.

CONCLUSION

It is disappointing, but not surprising, that certain regulators oppose the *NPRM*. But their opposition is without merit. NATOA, for example, emphasizes the unfairness of raising subscriber rates to establish uniform regional rates, without acknowledging that the "revenue

²² See, e.g., NY Jersey State Board of Public Utilities Comments at 12; Florida Cities Comments at 4.

²³ See Florida Cities Comments at 4.

²⁴ See, e.g., Time Warner Comments at 6-12.

²⁵ MediaOne Comments at 9.

neutral" process will also lower rates to a roughly equivalent number of subscribers.²⁶ NATOA's suggestion that cable operators can already achieve the benefits associated with uniform regional rates by reducing all rates to the lowest rate in the region²⁷ is hardly a constructive suggestion. It would result in aggregate revenue well below that otherwise dictated by the Commission's regulations. NATOA is also wrong in asserting that uniform regional rates will encourage cross-subsidization and "unfairly stifle emerging competition."²⁸ By definition, regional rates preclude an operator from using high rates in non-competitive communities to subsidize low rates in competitive communities.²⁹

²⁶ NATOA Comments at 3.

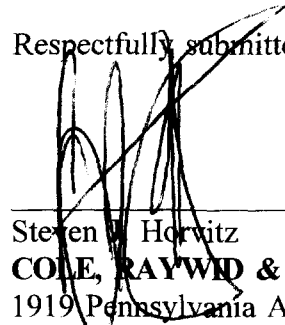
²⁷ *Id.* at 7.

²⁸ *Id.* at 5.

²⁹ The suggestion by Ameritech New Media Enterprises that the Commission should delay action in this proceeding or sharply limit the use of regional rates should be rejected as a transparent attempt by a new entrant to impede the ability of established cable operators to market services in an efficient, customer-friendly fashion. Ameritech's opposition poignantly reveals precisely why the Commission should proceed with the promised relief. A failure to do so will impede the cable industry's competitive ability.

In the end, the establishment of uniform regional rates by cable operators makes imminent good sense and promises important public benefits. The Commission should facilitate, rather than frustrate, that objective.

Respectfully submitted,



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March 12, 1995

Attachment A

Charter Communications, Inc.
Greater Media, Inc.
Marcus Cable Partners, L.P.

Colorado Cable Television Association
Cable Television Association of Georgia
Indiana Cable Television Association
Cable Television Association of Maryland, Delaware and the District of Columbia
Michigan Cable Telecommunications Association
South Carolina Cable Television Association
Tennessee Cable Television Association
Wisconsin Cable Communications Association